IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 26905 of 2006(C)

OS.111/2000 of PRL.S.C.,THALASSERY
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PETITIONERS:
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1. P.K.RUKIYA, W/O.V.KUNHABDULLA,
VAICHIMBATH HOUSE, P.O.PANOOR,
KANNUR DISTRICT.

2. V.KUNHABDULLA, S/O.MAMMAD,
AGED 63 YEARS, RETD. TEACHER,
RESIDING AT DO. DO.

BY ADV. SRI.V.RAJAGOPAL

RESPONDENT:

THE SOUTH INDIAN BANK LTD.,
REP. BY ITS BRANCH MANAGER,
TELLICHERRY.

BY ADV. SRI.K.PRABHAKARAN, SC,SOUTH INDIAN BANK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF EP 241/04 IN OS 111 OF 2000 OF PRL. SUB COURT TELLICHERRY.

EXT.P2 : TRUE COPY OF THE COUNTER SUBMITTED BY THE PETITIONERS AGAINST THE DRAFT SALE PAPER.

EXT.P3 : TRUE COPY OF AFFIDAVIT IN EA 379/06 IN EP 241/04 ON THE FILE OF THE SUB COURT, TELLICHERRY.

EXT.P4 : TRUE COPY OF PETITION EA 379/05 OF DO. DO.

EXT.P5 : TRUE COPY OF THE AFFIDAVIT IN EA 395/06 OF DO. DO.

EXT.P6 : TRUE COPY OF PETITION EA 395/06 OF DO. DO.

EXT.P7 : TRUE COPY OF THE ORDER IN EA 395/06 OF DO. DO. DT.16.08.06.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 26905 OF 2006

Dated this the 1st day of August, 2007

JUDGMENT

Heard both sides. It cannot be said that the view of the learned Subordinate Judge expressed in Ext.P7 that the contention that a portion of the property alone need be sold is not available to a person who is the judgment debtor against whom a mortgage decree has been passed is wrong. However, while admitting this Writ Petition, stay was granted on condition that the petitioner shall deposit a sum of Rs.50,000/- within one month from the date of the order. It is not disputed that the above condition has been complied with.

Having regard to the assertion of the decree holder that it will be possible for him to identify a purchaser who will be prepared to pay the entire decree debt or more, for a portion of the property, I dispose of the Writ Petition itself issuing the following directions:

The petitioner is directed to pay a sum of Rs.50,000/- to the respondent Bank within one month from today. If he makes such payment and produce evidence in that regard before the court below, the court below will hold up further proceedings pursuant to Ext.P7 for another five months. It is open to the petitioner to identify a purchaser who will be prepared to purchase any portion of the decree schedule

property for realising the entire decree debt. Once such a purchaser is identified, the petitioner will produce the agreement before the court below and apply for permission to have a private sale of a portion of the property to that purchaser. The court below will consider that application, hear both sides and pass appropriate orders and thereby ensure that either the petitioner or the prospective purchaser pays the entire decree debt so that the decree will stand satisfied. At any rate, the order of stay will not continue beyond six months from today.

PIUS C. KURIAKOSE, JUDGE

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